IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2074 OF 2007

Sanjaykumar Mahalingappa Mudake ...Petitioner
V/s.
Smt.Gangabai Mahalingappa Mudake & Ors. ...Respondents

Mr.M.R. Deshpande for the Petitioner.
None for the Respondents.

CORAM : V.M. KANADE, J.

DATED : JULY 9, 2007

P.C. :-

1. Heard the learned Counsel for the petitioner.

2. The petitioner is the original plaintiff who had filed the suit for partition and separate possession of the suit property. In this suit, the respondent no.7 had filed an application claiming to have an interest in the said property. The trial Court has allowed the revision application.

3. The learned Counsel for the petitioner submits that respondent no.7 was adopted in the year 1958 by a registered deed and by virtue of Section 12 of The Hindu Adoptions and Maintenance Act, he looses his right in

the property of his natural parent. He submitted that this aspect has not been considered by the trial Court.

4. It is not possible to accept the submission made by the learned Counsel for the petitioner. At this stage, the trial Court only has to decide the question whether the applicant is a necessary or proper party or not and that it has to be seen whether he has any interest in the property which is the subject matter of the suit. In the present case, respondent no.7 alleges that he has a share in the said property on account of averments which are made in his application. In this matter, at this stage, it would not be possible to consider whether legally in fact, he has a clear right in the property or not as this question is a mixed question of fact and law will have to be decided at the final hearing of the suit.

. Writ Petition is, accordingly, disposed of.

(V.M. KANADE, J.)